

***United States Court of Appeals
for the Second Circuit***



AMICUS BRIEF

75-1004

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For the Second Circuit

No. 75-1004

UNITED STATES OF AMERICA,

Appellee,

against

ANTHONY M. NATELLI and JOSEPH SCANSAROLI,

Defendants-Appellants.

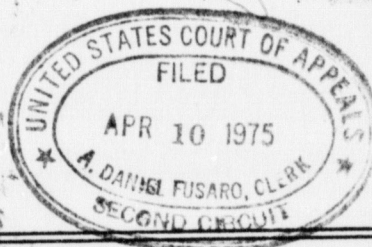
APPEAL FROM UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, AS AMICUS CURIAE

CRAVATH, SWAINE & MOORE,
Attorneys for Amicus Curiae
American Institute of Certified
Public Accountants,
One Chase Manhattan Plaza,
New York, N. Y. 10005

JOHN R. HUPPER
ROBERT ROSENMAN
J. BARCLAY COLLINS
Of Counsel.

April 9, 1975



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Argument

The trial court's instructions permitted the jury to infer guilty knowledge as to the falsity of both NSMC's audited and unaudited statements if it found that Natelli or Scansaroli "deliberately closed his eyes to the obvious or to the facts that certainly would be observed or ascertained in the course of his accounting work." [Emphasis added.] (Tr. 2364) We have submitted in our main brief that it was of critical importance, having given this instruction, that the trial court also make clear to the jury that the "accounting work" to which it referred would be substantially less where an audit was not involved and that, accordingly, the accountant would be much less likely to observe in the course of his work on the unaudited statements the facts he was charged to have known.

The government (while conceding there is "some difference" between an independent accountant's responsibilities for audited and unaudited statements) seeks to obfuscate the trial court's error in failing to give such instructions by suggesting that there is dispute as to the precise scope of the independent accountant's lesser responsibilities for unaudited statements, citing *United States v. Simon*, 425 F.2d 796 (2d. Cir. 1969), *cert. denied*, 397 U. S. 1006 (1970).

United States v. Simon involved audited statements. Only if the accountant audits and expresses an opinion does he hold himself out to the investing public as an independent source of comfort regarding the company's financial statements. The cases discussed in our main brief uniformly make clear that for this reason there is a substantial and important distinction between the responsibilities and concomitant liabilities of independent accountants for audited, as distinguished from unaudited, statements.

Simon does not treat that point at all—since it only involved audited financial statements. The error of the trial court in this case was in completely failing to inform the jury that different standards applied to accountants in connection with unaudited, as distinguished from audited, financial statements. The jury could not properly have assessed defendants' culpability with respect to NSMC's unaudited statements without an understanding that defendants' work on such statements would be far more limited than if an audit were involved. Without this understanding, the jury may have concluded that Natelli and Scansaroli were guilty of criminal conduct in connection with their work on NSMC's unaudited statements because they failed to follow procedures applicable only to their work on audited statements.

CONCLUSION

For the foregoing reasons, and the reasons stated in our main brief, the judgment of the District Court should be reversed and the case remanded for such further proceedings as are appropriate.

April 9, 1975

Respectfully submitted,

CRAVATH, SWAINE & MOORE,
Attorneys for Amicus Curiae
American Institute of Certified
Public Accountants,
 One Chase Manhattan Plaza,
 New York, New York 10005

JOHN R. HUPPER
 ROBERT ROSENMAN
 J. BARCLAY COLLINS
Of Counsel.

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Date: 4/9/75

Time: 2:30

MARTIN GORDON & REINDEL

Attorney for: Natelli

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Altes Co. & Sansardi

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CAHILL GORDON & REINDEL

Attorneys For: Paul J. Curran Michael

LC

